

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1715 OF 2005

Tulshiram Sitaram Kakade ...Petitioner

Versus

Baburao Bhau Walke (deceased)
Through his L.Rs. & Anr. ...Respondents

Mr. R.N. Sanghavi, counsel
..... for Petitioner

CORAM: B. H. MARLAPALLE, J.
DATED: 19TH APRIL, 2005

P. C.:-

1. Heard Mr. Sanghavi, the learned counsel for the petitioner.

2. The present petitioner had filed Regular Civil Suit No. 272 of 1986 against the respondent Nos. 1 and 2 for possession of the suit land and it was dismissed. The petitioner, therefore, filed Civil Appeal No. 246 of 1996. While the appeal was pending, an application under Order VI Rule 17 of C.P.C. for amendment of the plaint was moved for the first time on or about 29.9.2003. The learned Judge of the lower appellate Court was pleased to reject the said application by his order dated 29.9.2003. The said order reads as under:-

"It appears that this application is filed with a view to prolong the matter. Hence,

application is rejected."

Hence, this petition.

3. The learned counsel for the petitioner submitted that the lower appellate Court failed to give reasons while rejecting the amendment application and even though the application was belated it ought to have been allowed. The following authorities have been relied upon by the learned counsel for the petitioner;

- a. AIR 1989 Cal. 190 [Bibhas Chandra Bose Vs. Sm. Dolly Bose nee Dutta];
- b. (2001) 2 SCC 472 [Ragu Thilak D. John Vs. S. Rayappan & Ors.];
- c. (2002) 7 SCC 559 [Sampath Kumar Vs. Ayyakannu & Anr.]; and
- d. 2005(2) Bom. C.R. 273 (SC) [Pankaja & Anr Vs. Yellappa (D) by L.Rs. & Ors.].

4. The fact remains that the suit land was mentioned as Gut No. 997 and the respondent No.2 had alienated

the suit property in favour of the Prabodh Vasant Davkhare and Niranjana Vasant Davkhare, they were required to be brought on record. In addition, para 2(a) and 2(aa) were sought to be added. The application itself clearly states that the amendments sought were based on the sale deed dated 7.6.1984. It was prior in time of filing of the Suit in 1986. No explanation was furnished as to why the plaintiff could not bring on record the added defendants who had by the said sale deed purchased the suit property from the defendant No.2. The description of the property which was sought to be changed was different Gut number and no explanation was furnished as to how the plaintiff could not realise the correct description of the property right from 1986 to 2003. In the absence of such material particulars and the details, the order passed by the lower appellate Court though cryptic, cannot be held to be perverse so as to call for interference in this petition under Article 227 of the Constitution of India. The reasoning given by the petitioner himself in the said application spoke for itself and therefore, the plaintiff's challenge to the impugned order must fail at the threshold.

5. The petition is, therefore, rejected summarily.
